

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN LEE WILSON,

Petitioner,

No. CIV S-05-0405 GEB KJM P

vs.

SCOTT KERNAN,

Respondent.

ORDER

\_\_\_\_\_/

Petitioner is a California prisoner proceeding pro se with an application for writ of habeas corpus under 28 U.S.C. § 2254. On April 26, 2005, the court granted petitioner's motion to file an amended petition and informed petitioner that, in his amended petition, petitioner could not raise any claims that had not first been presented to the California Supreme Court. On May 10, 2005, petitioner asked for permission to withdraw his motion to amend and to proceed on his original habeas petition because petitioner did not present his new claim to the California Supreme Court.<sup>1</sup> Good cause appearing, IT IS HEREBY ORDERED that:

\_\_\_\_\_  
<sup>1</sup> Petitioner is informed that if he seeks leave to amend in the future he must inform the court whether any new claims have been presented to the California Supreme Court. If the claims have not been presented to, and rejected by, the California Supreme Court, a motion to amend and an amended habeas petition should be accompanied by a request for a stay until exhaustion of state court remedies is complete. See Rhines v. Weber, \_\_\_ U.S. \_\_\_, 125 S.Ct. 1528, 1535 (2005) and Mayle v. Felix, \_\_\_ U.S. \_\_\_, 125 S. Ct. 2562 (2005) (both cases decided

1 1. Petitioner's May 10, 2005 motion to withdraw his request to amend his habeas  
2 petition is granted;

3 2. Respondent is directed to file an answer to petitioner's March 1, 2005  
4 application for writ of habeas corpus within sixty days from the date of this order. See Rule 4,  
5 Rules Governing Section 2254 Cases. Respondent shall include with the answer any and all  
6 transcripts or other documents relevant to the determination of the issues presented in the  
7 application. Rule 5, Rules Governing Section 2254 Cases;

8 3. Petitioner's traverse, if any, is due on or before thirty days from the date  
9 respondent's answer is filed;

10 4. The Clerk of the Court shall serve a copy of this order together with a copy of  
11 petitioner's March 1, 2005 application for writ of habeas corpus on Jo Graves, Senior Assistant  
12 Attorney General.

13 DATED: December 19, 2005.

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16 UNITED STATES MAGISTRATE JUDGE  
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26 after the filing of petitioner's original petition).